IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

ORDER

SB CIVIL WRIT PETITION NO.6892/1993
Ramswaroop V/s Ajmer Vidyut Vitran Nigam Ltd., Ajmer

31.8.2006

PRESENT
HON'BLE MR. JUSTICE P.S. ASOPA

Mr.Arun Sharma, for the petitioner.
Mr.A.K. Sharma, for the respondents.

By the instant writ petition, the petitioner has prayed to quash the order dated 21/25 October, 1993 (Annexure-6) and decision of the Board for appointment of dependents of those, who died while in service and direct the respondents to appoint the petitioner on the post of Lower Division Clerk and pay him all benefits with retrospective effect.

The relevant facts, in brief, of the case are that the petitioner was appointed as dependent of deceased employee of the Board vide order dated 23.1.1988 on the post of Bill Distributor after considering his qualification of secondary. Prior to the said appointment, the Board has informed the petitioner vide letter dated 25.9.1989 (Annexure-7) that in case, he gives his consent for the post of Bill Distributor then his application can be considered and the petitioner

gave his consent on 26.9.1987 (Annexure-R/1). Subsequently, one Shri Ashok Kumar was appointed in dependent quota as L.D.C. in the year 1992.

The submission of counsel for the petitioner is that the respondents have acted arbitrary in not considering his case for appointment on the post of L.D.C. and he is entitled for appointment on the parity of Ashok Kumar.

The submission of counsel for the respondent is that the petitioner having given consent and thereafter accepted the appointment on the post of Bill Distributor, is not entitled for consideration on another higher post of L.D.C.. Counsel for the respondents further submits that the employer has to consider so many factors like availability of vacancies, suitability etc. before giving appointment and from the year 1984 to 1991, no one having qualification of secondary has been appointed on the post of L.D.C..

I have heard learned counsel for the parties and gone through the record of the writ petition and further considered the rival submissions of the parties.

Since the petitioner has given consent for appointment on the post of Bill Distributor, he has no vested right to claim compassionate appointment on the higher post subsequently, simply on the basis of educational qualification. The subsequent charge of

the policy of the Board in the year 1992 of giving appointment on the post of LDC also, will not give any right to the petitioner for reconsideration of his appointment on the post of LDC. Learned counsel for the respondents placed reliance on a judgment in case of **State of Rajasthan & Ors. V/s Sushil Kumar Natani – 2001 (6) SLR 397.** The relevant para 21 of the said judgment is as follows:-

> "We are firmly of the opinion that since the rules, providing for compassionate appointments, are based on humanitarian considerations and for giving immediate employment to the bereaved family, are liable to be considered as the rules, putting reasonable restrictions on the fundamental right, provided by Article 16. To give a wider interpretation to these rules, may result in the rules becoming unreasonable restricting any such restriction, which, in our view, is not permissible in law. We, therefore, are unable to accept the submission, made by Shri V.D. Gathala, that merely because the respondent is liable to be appointed on a higher post, he should be so appointed, by issue of a writ of mandamus, when the basis of such appointment is compassion. Therefore, no writ of mandamus can be issued directing appointment of the respondent, on a higher post, when hundreds of eligible, candidates, for that post, are waiting for their turn and when the respondent-petitioner was already granted preferential treatment and given appointment on the post of Lower Division Clerk. The said post was given to the respondent-petitioner,

> without even permitting him or exposing him to competition with several other candidates. In such a situation, we are of the opinion that it is not a case, where the learned Single Judge could issue a mandamus, directing the appellants, to appoint the respondent, on a higher post. The order of the learned Single Judge is not correct and is, therefore, set aside."

There are other judgments also to the same effect in cases of **State of Rajasthan V/s Umrao Singh – (1994) 6 SCC 560, Hemant Chouhan V/s State of Rajasthan - 2001 (3) WLC (Raj.) 616** and **Karan Singh V/s State of Rajasthan & anr. - 2001 (4) WLC (Raj.) 706.**

In view of the aforesaid settled position of law that once a candidate appointed on a particular post, he has no vested right to be considered and appointed on a higher post on compassionate ground, the petitioner is not entitled for any relief of appointment on the higher post.

The writ petition fails and is dismissed.

(P.S. ASOPA) J.

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